

## 940 CMR: OFFICE OF THE ATTORNEY GENERAL

### 940 CMR 29.00: OPEN MEETINGS

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#### 29.01: Purpose, Scope and Other General Provisions

(1) Authority. The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law, pursuant to M.G.L. c. 30A, § 25(a) and (b).

(2) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(3) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(4) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

#### 29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

~~Commission means the Open Meeting Law Advisory Commission, as defined by M.G.L. c. 30A, § 19(e).~~

District Public Body means a public body with jurisdiction that extends to two or more municipalities.

Regional Public Body means a public body with jurisdiction that extends to two or more municipalities.

County Public Body means a public body created by county government with jurisdiction that comprises ~~of~~ a single county.

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements ~~or, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel~~, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person means all individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, ~~cable television channel, newspaper~~ or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided, further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office means the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified,

the member shall be deemed to be qualified for office on a ~~biennial~~biannual basis ~~on January 1st of a calendar year beginning on January 1, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member shall be deemed to have qualified for office on January 1, 2011 following appointment or election to office.~~

Remote Participation means participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

## 29.03: Notice Posting Requirements

### (1) Requirements Applicable to All Public Bodies.

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(c) The date and time that ~~the a meeting~~ notice is posted shall be conspicuously recorded thereon or therewith. The date and time that a meeting notice is amended, if the amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, shall also be conspicuously recorded thereon or therewith.

(~~e~~) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.

### (2) Requirements Specific to Local Public Bodies.

(~~a~~) ~~(a)~~ The municipal clerk, or other person designated by agreement with the municipal clerk, shall post notice of the meeting in a manner conspicuously visible to the public at all hours in ~~or, on, or near~~ the municipal building in which the clerk's office is located. Such notice shall be accessible to the public in the municipal clerk's office during the clerk's business hours.

~~(b) Alternatively, If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved the municipality may adopt the municipal website as the official method of notice posting by the Attorney General under 940 CMR 29.03(2)(b)4.~~

- ~~1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website. Any municipality that has adopted its website by another method as of [the date of the final promulgated regulations] will have satisfied the adoption requirement.~~
- ~~2. If adopted, a description of such alternative method the website as the notice posting location, sufficient to allow members of the public to obtain notice through such method, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located. Meetings notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.~~

~~— Once adopted as the official method of notice posting, the website will host the official legal notice for meetings of all public bodies within the municipality.~~

~~— (b) For local public bodies, the Attorney General has determined, pursuant to M.G.L. c. 30A, § 20(c), that the following alternative methods will provide more effective notice to the public:~~

- ~~— 1. public bodies may post notice of meetings on the municipal website;~~
- ~~3.~~
- ~~2. public bodies may post notice of meetings on cable television, AND, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;~~
- ~~3. public bodies may post notice of meetings in a newspaper of general circulation in the municipality, AND, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;~~
- ~~4. public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building; or~~
- ~~5. public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.~~

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt ~~post a meeting notice on~~ the regional or district public body's website as its official notice posting location. A copy of ~~the each meeting~~ notice shall ~~be be filed and~~ kept by the chair of the public body or the chair's designee in accordance with the Commonwealth's records retention schedule. The public body shall file and post notice of the website location in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may-, by majority vote, adopt ~~may post a meeting notice on~~ the regional school district's website as its official notice posting location. A copy of ~~the each meeting~~ notice shall be ~~filed and~~ kept by the secretary of the regional school district committee or the secretary's designee in accordance with the Commonwealth's records retention schedule. The regional school district committee shall file and post notice of the website location in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may, by majority vote, adopt ~~post a meeting on~~ the county public body's website as its official notice posting location. A copy of the notice shall be ~~filed and~~ kept by the chair of the county public body or the chair's designee in accordance with the Commonwealth's records retention schedule. The county public body shall file and post notice of the website location in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website ~~in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance for the purpose of providing the public with effective notice.~~ A copy of each notice shall also be sent by first class or electronic mail to the Secretary of State's the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its ~~Internet notice posting location~~ website and any change ~~theretoto the website location~~. The public body shall consistently use the most current ~~notice posting method~~ website location on file with the Attorney General.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within four hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within four business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

#### 29.04: Certification

(1) (1)-For local public bodies, a document including M.G.L. c. 30A, §§ 18 through 25; a document including 940 CMR 29.00; and educational materials prepared by the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall deliver to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into performance of the office, the following educational materials:

(a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and the Attorney General's regulations, 940 CMR 29.00-29.11.

(b) explaining M.G.L. c. 30A, §§ 18 through 25, and its application, shall be delivered by the municipal clerk to each member of a public body. A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last 3 years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into performance of the office. Open Meeting Law determinations are available on the Attorney General's website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting). Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The municipal clerk shall maintain the signed certification for each such person, indicating the date the person received the materials.



~~(2) For regional, district, county or state public bodies, a document including M.G.L. c. 30A, §§ 18 through 25; a document including 940-CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, §§ 18 through 25, and its application, shall be delivered by the appointing authority, executive director or other appropriate administrator or their designees, to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into the performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.~~

(3) Educational materials may be delivered to public body members by paper copy or in digital form.

(4) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(5) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(6) A public body member must sign a new certification form upon reelection or reappointment to the public body.

#### 29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) ~~For local public bodies, T~~he complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. ~~The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.~~

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

~~(4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after he or she receives the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).~~

(55) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(a) and (b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the complainant-Attorney General that it has sent such materials to the Attorney General complainant and shall provide the complainant Attorney General with a copy of the response and description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after he or she receives the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(67) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other



materials the complainant believes are relevant. The Attorney General ~~may~~shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

~~(78)~~ The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. ~~If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.~~

#### (9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and may be chosen by the public body.

(b) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.

(c) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), ~~then~~ the Division may decline to ~~not~~ review the complaint if it is thereafter filed with the Attorney General.

(d) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.

(e) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.

(f) Nothing in this section shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).

(g) Nothing in this section shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(c).

~~(8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.~~

#### 29.06: Investigation

~~Whenever~~ Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25, has occurred ~~that has not been adequately remedied~~, then the Attorney General ~~may~~ shall conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint ~~and an investigation~~ of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General, addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue ~~subpoenas~~ one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or ~~other action taken~~ in a written determination to ~~conduct or~~ resolve the investigation pursuant to 940 CMR 29.0007.

#### 29.07: Resolution

(1) No Violation. If the Attorney General determines, after investigation, that M.G.L. c. 30A, §§ 18 through 25, has not been violated, the Attorney General shall ~~terminate the investigation and notify, in writing, the subject of the investigation and any complainant~~ issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25, has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible, ~~and whether the violation was intentional or unintentional~~. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of ~~the~~ M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a ~~telephone call~~, letter or other appropriate form of written? communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.

(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:

1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;

2. attendance at a training session authorized by the Attorney General;

~~2.3.~~ nullification of any action taken at the relevant meeting, in whole or in part;

~~3.4.~~ that minutes, records or other materials be made public; ~~or~~

5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or

~~4.6.~~ other appropriate action.

Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00, et seq., as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25, occurred, and whether the public body, one or more of its members, or both, were responsible, ~~and whether the violation was intentional or unintentional~~. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

- (a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
- (b) attendance at a training session authorized by the Attorney General;
- (c) nullification of any action taken at the relevant meeting, in whole or in part;
- (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) that minutes, records or other materials be made public; or
- (g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07 shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body does not need to notify the Attorney General of its compliance with an order requiring solely of immediate and future compliance pursuant to 940 CMR 29.07(2)(b)(1) or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

#### 29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes to M.G.L. c. 30A, §§ 18 through 25, court decisions interpreting M.G.L. c. 30A, §§ 18 through 25, or other developments concerning M.G.L. c. 30A, §§ 18 through 25 written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

(1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the Commission.

~~(2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.~~

~~(3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of M.G.L. c. 30A, §§ 18 through 25.~~

#### 29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25, pursuant to M.G.L. c. 30A, § 23(f).

#### 29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the M.G.L. c. 30A, §§ 18 through 25 ~~Open Meeting Law~~, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other, as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reasons for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), only if ~~the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's~~ physical attendance would be unreasonably difficult.:

~~(a) Personal illness;~~

~~(b) Personal disability;~~

~~(c) Emergency;~~

~~(d) Military service; or~~



~~(e) Geographic distance.~~

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

~~i1.~~ telephone, internet, or satellite enabled audio or video conferencing;

~~2ii.~~ any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely ~~and the reason under 940 CMR 29.10(5) for his or her remote participation.~~ This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

#### 29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes, in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. Timely manner will generally be considered is understood to be within the next three regular? public body meetings, unless the public body can show good cause for further? itsdelay.

REGULATORY AUTHORITY 940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).